

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANGREJ SINGH,

Petitioner,

v.

ALBERTO R. GONZALES, *et. al*,

Respondents.

CASE NO. C05-1686-JLR-JPD

REPORT AND
RECOMMENDATION

I. INTRODUCTION AND SUMMARY CONCLUSION

Petitioner Angrej Singh is a native and citizen of India who is currently in the custody of the United States Immigration and Customs Enforcement (“ICE”). On October 5, 2005, he filed, *pro se*, a Petition for Writ of Habeas Corpus pursuant to 8 U.S.C. § 2241, challenging the constitutional and statutory authority of ICE to detain him any further due to the unlikelihood of his removal from the United States in the reasonably foreseeable future. (Dkt. #1). Respondents argue that petitioner fails to state an actionable claim of indefinite detention or otherwise demonstrate any deprivation of a statutory or constitutional right. (Dkts. #9 at 7, #15 at 2).

Having carefully reviewed the entire record, I recommend that petitioner’s habeas petition (Dkt. #1) be DENIED and respondents’ motion to dismiss (Dkt. #9) be GRANTED.

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II. BACKGROUND AND PROCEDURAL HISTORY

Petitioner Angrej Singh is a native and citizen of India. (Dkt. #1). On May 31, 1992, he sought entry into the United States at Detroit, Michigan. (Dkt. #8 at 71). Petitioner was inspected and detained as an intending immigrant without documentation and applied for political asylum. (Dkt. #9 at 71, 143). On July 2, 1992, the former Immigration and Naturalization Service (“INS”) conducted an asylum pre-screening interview and granted petitioner immigration parole into the United States. On January 20, 1993, the INS conducted a formal asylum interview. On May 26, 1993, the INS denied petitioner’s application for asylum, finding that petitioner had failed to establish a well-founded fear of persecution. (Dkt. #9 at 64). Petitioner, through counsel, submitted an administrative appeal of the asylum decision. The INS denied petitioner’s appeal. (Dkt. #10 at S-8).

On May 26, 1994, the INS terminated petitioner’s parole and issued a Form I-122 Notice to Applicant for Admission Detained for Hearing Before Immigration Judge, placing petitioner in exclusion proceedings, and charging petitioner as an intending immigrant not in possession of an immigrant visa, and as a nonimmigrant not in possession of a valid passport or nonimmigrant visa. (Dkt. #9 at 165). Petitioner’s exclusion hearing before an Immigration Judge (“IJ”) was scheduled for September 9, 1996. (Dkt. #9 at 97). In accord with asylum regulations, petitioner was permitted to renew his asylum request in the Immigration Court proceedings. In connection with petitioner’s renewed asylum application, the Executive Office for Immigration Review (“EOIR”) requested an advisory opinion from the United States Department of State on petitioner’s asylum application. The State Department concluded that petitioner’s “description of events which led him to seek asylum (his claimed membership in AISSF and his claim to have been mistreated because of his religion and his political opinion) does not stand up to rigorous analysis.” (Dkt. #9 at 124).

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1 On September 9, 1996, petitioner's attorney attended the exclusion hearing, but petitioner
2 failed to appear. Accordingly, the IJ determined that petitioner had abandoned his claims for relief
3 from exclusion and ordered petitioner excluded *in absentia*. (Dkt. #9 at 96). Petitioner did not
4 appeal the IJ's order to the Board of Immigration Appeals ("BIA") or to the Ninth Circuit Court
5 of Appeals.

6 On May 18, 1996, petitioner, using the name Gurmej Singh Pahal, filed another application
7 for asylum. On April 2, 1996, the asylum office granted petitioner's application for asylum under
8 the identity of Gurmej Singh Pahal. *Id.*

9 On September 17, 1996, the San Francisco, California asylum office received a letter from
10 petitioner stating that he had left the country. (Dkt. #10 at S-8; Dkt. #9 at 90). Petitioner failed
11 to appear for his scheduled removal from the United States to India on March 3, 1997. (Dkt. #10
12 at S-8).

13 On September 15, 1997, petitioner filed an application for adjustment of status with the INS
14 at Spokane, Washington. In January 1998, while petitioner's application for adjustment of status
15 was pending, the INS received an anonymous letter, stating that Angrej Singh had lost his case
16 before the Immigration Judge, so he changed his name to Gurmej Singh Pahal, reapplied for asylum,
17 and won his case under a different name. *Id.* On March 12, 1998, the Spokane County Sheriff's
18 office advised the INS that it had examined the fingerprints of Andrej Singh and Gurmej Singh Pahl
19 and determined that the prints came from the same person. (Dkt. #10 at S-14). On September 16,
20 2004, petitioner went to the Spokane Office to obtain travel documents to Canada for himself and
21 his family. Petitioner was taken into custody and held on the IJ's September 9, 1996, order of
22 exclusion. (Dkt. #10 at S-8). Petitioner admitted that he is Andrej Singh. *Id.*

23 On September 17, 2004, the Department of Homeland Security ("DHS") rescinded the grant
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1 of asylum to Andrej Singh under the identity of Gurmej Singh Pahal, stating that petitioner “was
2 improperly granted asylum as he was under an order of exclusion and had applied under an assumed
3 identity.” (Dkt. #10 at S-13).

4 On November 24, 2004, petitioner, through counsel, filed a motion to reopen his exclusion
5 proceedings. (Dkt. #9 at 58). On January 4, 2005, the IJ denied the motion to reopen. (Dkt. #9
6 at 40). The decision was timely appealed and was affirmed, without opinion, by the BIA on May
7 17, 2005. (Dkt. #9 at 2). On May 20, 2005, petitioner filed a Petition for Review and Motion to
8 Stay Deportation/Removal in the Ninth Circuit Court of Appeals. A stay was automatically granted
9 pursuant to the Ninth Circuit General Order 6.4. ICE thus suspended its efforts to obtain travel
10 documents from the Government of India permitting petitioner’s repatriation to that country. (Dkt.
11 #13 at S-26). Petitioner’s Petition for Review remains pending in the Ninth Circuit.

12 On October 5, 2005, petitioner filed the instant habeas petition. (Dkt. #1). On December
13 7, 2005, respondents filed a Return Memorandum and Cross-Motion to Dismiss. (Dkt. #9).
14 Petitioner did not file a reply.
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16 III. DISCUSSION

17 A. Jurisdiction

18 Pursuant to Section 106 of the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231
19 (codified at 8 U.S.C. § 1252), the exclusive means of asserting a challenge to a final order of
20 removal and matters dependent thereon is to file a Petition for Review with the appropriate court
21 of appeals. INA § 242(a)(5), (b)(2), 8 U.S.C. § 1252(a)(5), (b)(2). Here, however, petitioner does
22 not seek judicial review of the underlying removal order. Rather, he challenges the legality of his
23 continued detention under *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653
24 (2001). As an initial matter, the Court finds that it has habeas jurisdiction to determine whether
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1 petitioner is being detained in violation of his statutory or constitutional rights. *Zadvydas*, 533
2 U.S. at 688. Accordingly, petitioner's claim that he is entitled to release from detention pending
3 adjudication of his Petition for Review in the Ninth Circuit Court of Appeals is properly before
4 the district court on petition under 28 U.S.C. § 2241.¹

5 B. Habeas Corpus Petition

6 Under INA § 241(a)(1), respondents are entitled to a 90-day period within which to remove
7 an alien from the United States, during which time detention is mandatory. The "removal period"
8 begins on the later of the following:

9 (i) The date the order of removal becomes administratively final.

10 (ii) If the removal order is judicially reviewed and if a court orders a stay of
11 the removal of the alien, the date of the court's final order.

12 (iii) If the alien is detained or confined (except under an immigration process),
13 the date the alien is released from detention or confinement.

14 INA § 241(a)(1)(B). In *Zadvydas* the Supreme Court held that, beyond those 90 days, the
15 government is entitled to "a period reasonably necessary to bring about the alien's removal from
16 the United States." *Zadvydas*, 533 U.S. at 689. In determining what is a reasonable removal
17 period, the Court adopted "for the sake of uniform administration in the federal courts," a
18 presumptively reasonable period of detention of six months. *Id.* at 701.

19 The Supreme Court explained that after this six-month period, the alien is eligible for
20 conditional release upon demonstrating that there is "no significant likelihood of removal in the
21 reasonably foreseeable future." *Id.* Nonetheless, the six month presumption "does not mean that
22 every alien not removed must be released after six months. To the contrary, an alien may be held

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24 ¹The Government has withdrawn its argument that this Court lacks jurisdiction to
25 entertain petitioner's claim that he is entitled to release from detention *pendente lite*. (Dkt. #15
26 at 2).

1 in confinement until it has been determined that there is no significant likelihood of removal in the
2 reasonably foreseeable future.” *Id.* The petitioner has the burden of coming forward with “good
3 reason to believe there is no reasonable likelihood of removal in the reasonably foreseeable
4 future.” *Id.* Then the burden shifts to respondents to produce evidence which could rebut
5 petitioner’s showing. *Id.*


6 Petitioner argues for his release under *Zadvydas*, contending that his continued detention
7 pending resolution of his Petition for Review in the Ninth Circuit is unlawful because there is no
8 significant likelihood of his removal in the reasonably foreseeable future.² (Dkt. #1 at 3). Here,
9 however, petitioner sought and was granted a stay of his removal order by the Ninth Circuit on May
10 20, 2005. This stay of removal remains in effect while petitioner’s petition for review is pending
11 in the Ninth Circuit. Unlike *Zadvydas*, petitioner is not being held indefinitely beyond the removal
12 period. Rather, petitioner is being held pursuant to the stay he has requested. Thus, this Court finds
13 that, as the stay is still in effect, the presumptively reasonable six month period has no yet begun
14 under INA § 241(a)(1)(B)(ii), 8 U.S.C. § 1231(a)(1)(B)(ii). Moreover, there is no indication that
15 petitioner’s removal to India is not reasonably foreseeable or that travel documents will not be
16 issued once his Petition for Review has been resolved and the stay is lifted. As petitioner has failed
17 to support any assertion that his future removal is not reasonably foreseeable, but for the existence
18 of the stay, the Court must deny habeas relief. *See Zadvydas*, 533 U.S. at 701; *see also Khan v.*
19 *INS*, 194 F. Supp. 2d 1134, 1137 (S.D. Cal. 2001)(finding that petitioner had not met his burden
20 under *Zadvydas* where petitioner failed to show any barriers to his repatriation to Pakistan).
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24 ²Petitioner also claims that he is seriously ill and is in need of potential surgical
25 intervention. (Dkt. #1 at 4). To the extent that petitioner raises claims challenging the
26 conditions of his confinement, such claims must be brought in a separate civil rights action.

CONCLUSION

For the foregoing reasons, I recommend that respondents' motion to dismiss be granted, and that the action be dismissed. A proposed Order accompanies this Report and Recommendation.

DATED this 21st day of March, 2006.



JAMES P. DONOHUE
United States Magistrate Judge